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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,518	09/24/2003	Carl Robert Aron	1048-41-00003	4348
31013 7590 12/03/2008 KRAMER LEVIN NAFTALIS & FRANKEL LLP INTELLECTUAL PROPERTY DEPARTMENT 1177 AVENUE OF THE AMERICAS NEW YORK, NY 10036				
EXAMINER VEZERIS, JAMES A				
ART UNIT 3693		PAPER NUMBER		
NOTIFICATION DATE 12/03/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

klpatent@kramerlevin.com

### Office Action Summary

**Application No.**

10/669,518

**Applicant(s)**

ARON ET AL.

**Examiner**

JAMES A. VEZERIS

**Art Unit**

3693

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 308-312, 319-321 and 327-330 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 308-312, 319-321 and 327-330 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/27/2008
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **Detailed Action**

#### **Restriction Response**

1. Applicant's election of Claims 289-300, 308-312, 319-321, and 327-330 in the reply filed on 10/27/2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

#### **Claim Rejections- 35 U.S.C. 101**

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 289-300, 308-312, and 327-330 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 289-300 and 308-312 are directed to a method which is not linked to a statutory class. In order for a method to be considered a "process" under §101, a claimed process must either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter. Claims 327-300 are directed to a retail power exchange, which the examiner is reading as computer code per se and therefore is not statutory.

**Claim Rejections- 35 U.S.C. 112 2<sup>nd</sup> Paragraph**

4. Claim 290 recites the limitation "the proposed electric power transaction" in the second line. There is insufficient antecedent basis for this limitation in the claim. Examiner will review the claim as if "the proposed electric power transaction" was "the proposed transaction."

**Claim Rejections- 35 U.S.C. 102(e)**

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 289-300, 308-312, 319-321, and 327-330 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,785,592 to Smith et al. (Hereinafter "Smith")

**Regarding Claim 289.**

Smith teaches evaluating a proposed transaction involving the sale and purchase of electric power between at least one energy service provider and at least one customer, comprising:

identifying an electric load of a customer;  
modeling a combination of the electric load of the customer with existing electric power supply obligations of an energy service provider; and  
determining an effect upon the energy service provider's efficiency of energy usage of combining the electric load of the customer with the existing electric power supply obligations of the energy service provider.

(See Columns 11-12 Lines 62-60)

**Regarding Claim 290.**

Smith further teaches providing data relevant to pricing the proposed electric power transaction between the customer and the energy service provider. (See Columns 11-12 Lines 62-60)

**Regarding Claim 291.**

Smith further teaches identifying the electric load of the customer includes:  
accessing a database including data relating to the electric load of the customer;  
(See Column 10 Lines 26-40)

selecting at least one discrete criterion; (See Columns 11-12 Lines 62-60)  
determining whether the data in the database relating to the electric load of the customer satisfy the at least one discrete criterion. (See Columns 11-12 Lines 62-60)

**Regarding Claim 292.**

The method of claim 291, wherein the electric load data are normalized. (See Column 15 Lines 27-41)

**Regarding Claim 293.**

Smith further teaches the at least one discrete criterion includes one of a specified load shape characteristic, a load factor, a power factor, a size of load, a location of load, and a customer SIC code. (See Columns 11-12 Lines 62-60)

**Regarding Claim 294.**

Smith further teaches determining the effect on the efficiency of energy usage includes determining a change in the energy service provider's efficiency in electric energy usage as a result of (i) adding all of the customer's electric load to the supply obligations of the energy service provider, (ii) adding a portion of the customer's electric load to the supply obligations of the energy service provider, (iii) removing all of the customer's electric load from the supply obligations of the energy service provider, or (iv) removing a portion of the customer's electric load from the supply obligations of the energy service provider. (See Column 10 Lines 26-40)

**Regarding Claim 295.**

Smith further teaches determining an effect on the efficiency of electric energy usage includes evaluating whether the energy service provider would be required to acquire an additional electric power supply in order to service the added electric load. (See Columns 11-12 Lines 62-60)

**Regarding Claim 296.**

Smith further teaches determining the effect on the efficiency of energy usage includes selecting at least one impact criterion; and

determining whether combining the electric load of the customer with the electric power supply obligations of the energy service provider would satisfy the selected

impact criterion. (See Columns 11-12 Lines 62-60)

**Regarding Claim 297.**

Smith further teaches the at least one impact criterion includes a change in a load factor as a result of combining the electric load of the customer with the electric power supply obligations of the energy service provider. (See Columns 11-12 Lines 62-60)

**Regarding Claim 298.**

Smith further teaches determining whether the at least one impact criterion is satisfied is made in relation to a combination of the electric power supply obligations of the energy service provider with one of (i) an aggregated electric load of the customer and (ii) an aggregated electric load of at least two customers. (See Columns 11-12 Lines 62-60) Examiner notes the system can be applied to any number of customers.

**Regarding Claim 299.**

Smith further teaches the at least one impact criterion includes one of (i) maximum hourly demand, (ii) change in integral multiple factor, (iii) maximum load duration value decrease, (iv) minimum load duration value increase, (v) amount available capacity can be exceeded, (vi) minimum integral multiple factor increase, (vii) maximum integral multiple factor decrease, (viii) minimum load factor increase, and (ix) maximum load factor decrease. (See Column 16 Lines 56-64)

**Regarding Claim 300.**

Smith further teaches the impact criterion includes determining a change in energy service provider's efficiency in electric energy usage as a result of (i) adding all

of the customer's electric load to the supply obligations of the energy service provider, (ii) adding a portion of the customer's electric load to the supply obligations of the energy service provider, (iii) removing all of the customer's electric load from the supply obligations of the energy service provider, or (iv) removing a portion of the customer's electric load from the supply obligations of the energy service provider. (See Columns 11-12 Lines 62-60)

**Regarding Claims 308-312, 319-321, and 327-330.**

Claims 308-312, 319-321, and 327-330 are analogous to claims 289-300 and are therefore rejected under analogous reasoning.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES A. VEZERIS whose telephone number is (571)270-1580. The examiner can normally be reached on Monday-alt. Fridays 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on 571-272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James A. Kramer/  
Supervisory Patent Examiner, Art Unit 3693

/JAMES A VEZERIS/  
Examiner, Art Unit 3693

11/19/2008